

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2236 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

MANAGING TRUSTEE

Versus

SUMANTRAI JIVANJI DESAI

Appearance:

1. Special Civil Application No. 2236 of 1988
MR RD DAVE for Petitioners
MR DP VORA for Respondent No. 1
MR SN SHELAT for Respondent No. 2
Mr Pujari,AGP for Respondent No. 3
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CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 18/02/2000

ORAL JUDGEMENT

This petition is filed by the management for appropriate writ , direction or order quashing and setting aside the judgment and order at Annexure 'A' passed by the Gujarat Affiliated College Services Tribunal, Ahmedabad on March 29, 1988 in Application No. 36 of 1986.

It is not necessary , for disposal of this petition, to enter into larger questions. The facts which are not disputed, as observed in the order by the Tribunal, are that respondent No. 1 had joined in Sabarmati Arts and Commerce college, Sabarmati, Ahmedabad from June 15, 1971. His date of birth , as shown in Matriculation Examination Certificate was July 31,1926. He was to be superannuated on July 31, 1986 after completion of 60 years. Ordinarily, therefore, he could have been superannuated on that day i.e. July 31, 1986. Ordinance No. 172 (15) of the Gujarat University,however, provides for extension of period upto October 31 of the year when the second term has already started. The said Ordinance reads as under :

"15. Age of retirement:

The date of superannuation of a teacher who has been appointed on and from 1.10.1984 is the date on which he attains the age of 58. Provided that the date of superannuation of a teacher who has been appointed before 1.10.1984 is the date on which he attains the age of 60.

Provided further that the date of superannuation shall be 10th November or 14th June of year whichever comes earlier after the teacher attains the age of retirement".

The Tribunal considered the above Ordinance and held that in the case of respondent No.1, after he reached the age of superannuation on July 31, 1986 , he was required to be continued as per the above Ordinance upto November 10, 1986. In view of the fact, however, that he was superannuated by the college from July 31, 1986, he was constrained to approach the Tribunal and the Tribunal allowed the application on the basis of the above Ordinance . Tribunal, therefore, allowed the application on March 19, 1988 and in the operative part of the order, observed :

"In the result, the application is allowed. The applicant is declared as entitled to continue upto 31.10.1986 in the opponent college. It is declared that the applicant is deemed to have continued upto 31.10.1986 as per University rules. The opponent college is directed to pay to the applicant the salaries for the period between 1.8.1986 and 31.10.1986 within a period of one month from today irrespective of the factor whether it is held admissible for the purpose of grant or not. It is recommended to the Govt,. to hold these salaries admissible for the purpose of grant. If and when the applicant receives the salaries for the period between 1.8.1986 and 31.10.1986, the applicant shall repay the pension amount which he has received for this period."

The management, being aggrieved by the order passed by the Tribunal, approached this Court. Contention of the management in the present petition is that the Tribunal has committed an error of law in granting benefits to respondent No.1. In the alternative, a direction is sought to the State Government to pay the grant for the salary of the first respondent.

An identical question came up before a Single Judge of this Court in SCA No. 6894 of 1985 and companion matters, decided on December 19, 1996. Considering relevant provisions of the Ordinance, the Court held that as per the Ordinance, date of superannuation is required to be extended for retiring an employee till the first or second term, as the case may be, would be over. Learned Single Judge also took into account Government resolution dated December 11, 1990 by which provision has been made that a teacher who attains the age of superannuation in the first term will continue in service till November 10 and a teacher who attains the age of superannuation in the second term will continue in service till June 14, of that year.

The Court held that in accordance with the provisions of the said Ordinance, it was obligatory on the part of State Government to pay salary of the teachers. Considering the above resolution, the Court in para 8 of its order, issued the following directions:

"In the result, these special civil applications are allowed and it is hereby declared that the respondent teachers therein in these petitions are entitled for the salary for extended date of retirement beyond actual date of superannuation with reference to the term or academic year and the State Government is under legal obligation to provide the grant to the petitioner institutions for making payment of salaries to these teachers for the aforesaid period. Rule is made absolute in aforesaid terms. As the petitioners have succeeded in these petitions, they are not required to reimburse the amount which they have received towards the grant of payment of salaries to the teachers in these petitions. No order as to costs."

In my opinion, the point is directly covered by the above decision of the learned Single Judge. In these circumstances, the petition is partly allowed. So far as the benefits to respondent No.1 Lecturer are concerned, the order passed by the Tribunal deserves to be confirmed and he would be entitled to all the benefits. The petitioners are, however, entitled to grant from respondent No.3 . It goes without saying that as observed by the Tribunal in the judgment, the amount of pension which respondent No.1 has received during the period between August 1, 1986 and October 31, 1986 will have to be refunded by him in view of the fact that he will be entitled to salary for that period. Petition is accordingly allowed partly . Rule made absolute to the extent indicated above. No order as to costs. Direct service permitted.

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parekh